In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.3875 of 2007

Date of Decision: 15.3.2007

Sushil Kumar & Another.

…Petitioners.

Versus

State of Punjab & Another.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Mahesh Gupta, Advocate
for the petitioners.

JUDGMENT

M.M.KUMAR, J. (ORAL)

The prayer made by the petitioner in the instant petition is to issue a direction to respondent No.2-Punjab State Electricity Board (for brevity "the Board") to give them employment in compliance with the promise made by the Board vide memo No.107852/ENG/SPL./LOOSE-76 dated 20.7.1987 (Annexure P1). A further prayer has also been made for quashing the order dated 8.12.2006 (Annexure P5) vide which the representation made by the

petitioners for the aforementioned relief was rejected.

The father of the petitioner died in the terrorists attack while working as Lower Division Clerk with the Board. It is claimed that vide letter dated 20.7.1987 (Annexure P1) the Board has made a promise that the family of the deceased Sh.Brahm Prakash, Lower Division Clerk would continue to get full salary till the notional date of retirement of the deceased employee. They were also to be given salary, benefit of increments and promotion which the deceased employee was to enjoy, had he remained alive. Thereafter, pension was to be given to the legal heirs. The children were to be afforded benefit of free education, reimbursement of tuition fee and expenditure on books by the Board as long as they continue their studies. The Board was to provide employment to three dependant children of the deceased husband along with ex-gratia amount of Rs.10,000/- plus Rs.1,000/- for cremation. The claim made is that the petitioners, who are children of deceased Sh.Brahm Parkash, have attained majority and are entitled to be given employment on compassionate basis as per the promise made in the letter dated 20.7.1987. The petitioners earlier approached this Court by filing C.W.P. No.14902 of 2006 which was disposed of on 18.9.2006 directing the respondent-Board to pass a speaking order on the legal notice served by the petitioners. The decision taken on the legal notice dated 8.12.2006 (Annexure P5) is also a subject matter of challenge.

According to the Board, the policy has been revised with regard to grant of financial benefits as Solatium Scheme vide memo No.161283/162233 dated 23.11.2004 in lieu of compassionate appointment. The Board has stopped giving employment on compassionate ground and lump-sum amount is given to the dependants of the deceased employee, besides special pension equal to the last pay drawn of the deceased employee. It has also been asserted that solatium of Rs.3.00 lacs,

calculated on the last pay drawn of the deceased in lieu of consideration of compassionate appointment, one of the petitioners Sh.Surjit Kumar has been sanctioned vide order No.649 dated 25.9.2006 and the payment is stated to have been made by the Additional Superintending Engineer/D.S., Rayya Division, Punjab State Electricity Board, Beas, vide cheque No.CA/56-233889 dated 30.11.2006. With regard to the special pension, it has been mentioned that the family is already getting a normal salary since the date of death of the deceased employee along with annual increments which he would have earned in the normal course of employment. The petitioner Sh.Sushil Kumar did not render any bill of tuition fee and expenditure on books, duly verified by the appropriate authority, accordingly, payment of Rs.2.00 lacs could not be made to him and his claim has been rejected.

After hearing learned counsel, we are of the view that the policy adopted by the Board vide its memo No.161283/162233 dated 23.11.2004 is in consonance with the view taken by Hon'ble the Supreme Court in a large number of judgments (e.g., **"Hindustan Aeronautics Ltd. v. A.Radhika Thirumalai" (1996) 3 SCC 394**, **"National Hydrolectric Power Corporation v. Nanak Chand" (2004) 12 SCC 497** and **"Commissioiner of Public Instructions v. K.R.Vishwanath" (2005) 7 SCC 206**). The compassionate appointments are exception to the general rule provided by Article 16(1) of the Constitution where all the eligible persons available in the field have been granted the right to compete for employment in accordance with law. Therefore, any exception to the general rule has to be considered strictly. The alternative course adopted by the Board does not in our view suffer any legal infirmity warranting our interference. A large number of benefits have also been granted to the family in the shape of full salary, free education of children, pension, special pension by giving lump-sum payments. Moreover,

the family has been able to sustain itself for over 20 years. Therefore, we are of the view that the order dated 8.12.2006 (Annexure P5) does not call for any interference by this Court. The writ petition, therefore, fails and we dismiss the same. However, dismissal of the writ petition shall not debar the petitioners to make any other claim before the Board, admissible under the policy dated 23.11.2004.

(M.M.KUMAR)
Judge

March 15, 2007 **(RAJESH BINDAL)**
dkb **Judge**